

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RANDY NEMECEK

PLAINTIFF

vs.

No. 5:19-cv-956

WESTOVER HILLS PHARMACY, INC.

DEFENDANT

ORIGINAL COMPLAINT

COMES NOW Randy Nemecek ("Plaintiff"), by and through his attorneys Merideth McEntire and Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint against Defendant Westover Hills Pharmacy, Inc. ("Defendant"), he does hereby state and allege as follows:

I. PRELIMINARY STATEMENTS

1. This is an action brought by Plaintiff against Defendant for violations of the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

2. Plaintiff seeks declaratory judgment, monetary damages, liquidated damages, prejudgment interest, costs, and a reasonable attorney's fee, as a result of Defendant's policy and practice of failing to pay Plaintiff proper overtime compensation under the FLSA within the applicable statutory limitations period.

II. JURISDICTION AND VENUE

3. The United States District Court for the Western District of Texas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

4. A substantial part of the acts complained of herein were committed and had their principal effect against Plaintiff within the San Antonio Division of the Western District of Texas; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

5. Plaintiff is a citizen and resident of Bexar County.

6. Defendant is a domestic for-profit corporation registered to do business in the State of Texas.

7. Defendant's principal place of business is 9793 Culebra Road, Suite 101, San Antonio, Texas 78251.

8. Defendant maintains a website at: <https://www.westoverhillsrx.com>.

9. Defendant's services include prescription dispensing, medication consultations, over-the-counter medication sales, special medication ordering, and asthma and diabetes management education.

10. The registered agent of Defendant is Virtuoso R&D Medical Consulting, LLC, 4809 Cole Avenue, Suite 346, LB 130, Dallas, Texas 75205.

IV. FACTUAL ALLEGATIONS

11. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

12. To support its services related to prescription and over-the-counter medication dispensing and medication consultation, Defendant hired Plaintiff as an hourly-paid Pharmacist.

13. Plaintiff's duties were to oversee prescription dispensing, verify prescription information, provide medical treatment such as vaccinations, and consult with customers about their medications.

14. At all relevant times, Defendant employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person, such as prescription and over-the-counter medications, and credit cards, debit cards, and other forms of payment.

15. Upon reasonable information and belief, for each of the three calendar years preceding the filing of the Original Complaint in this case, Defendant's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated).

16. Plaintiff was an employee of Defendant as defined by the FLSA from around July of 2018 until March of 2019.

17. At all relevant times, Defendant was Plaintiff's employer and is and has been engaged in interstate commerce as that term is defined under the FLSA.

18. Defendant directly hired Plaintiff, paid him wages and benefits, controlled his work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding his employment.

19. At all times material herein, Plaintiff has been entitled to the rights, protections and benefits provided under the FLSA.

20. Plaintiff performed the duties of a Pharmacist for Defendant during the last three years.

21. Defendant paid Plaintiff an hourly rate in exchange for services as a Pharmacist.

22. As a Pharmacist for Defendant, Plaintiff was required to clock-in and clock-out each day.

23. Plaintiff regularly worked more than forty hours per week.

24. Despite working more than forty hours per week on a regular basis, Plaintiff was only paid for forty hours per week during many of the weeks he worked.

25. Because Plaintiff was not paid for all hours worked, Plaintiff was not paid one and one-half times his regular hourly rate for all hours worked over forty per week.

26. Defendant knew or showed reckless disregard for whether the way it paid, and failed to pay, Plaintiff violated the FLSA.

V. VIOLATION OF THE FLSA

27. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

28. Plaintiff asserts this claim for damages and declaratory relief pursuant to the FLSA.

29. 29 U.S.C. § 207 requires employers to pay employees one and one-half times the employee's regular rate for all hours that the employee works in excess of forty (40) per week.

30. Defendant violated the FLSA by not paying Plaintiff one and one-half times his regular rate for all hours worked over forty in a given workweek.

31. Despite the entitlement of Plaintiff to overtime payments at the lawful rate of one and one-half times his regular hourly rate for all hours worked in excess of forty in

each workweek, Defendant failed to pay Plaintiff a lawful overtime rate and did not pay Plaintiff for all hours worked.

32. Defendant's conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

33. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for, and Plaintiff seeks, unpaid overtime wages, liquidated damages, pre-judgment interest, and costs, including reasonable attorney's fees as provided by the FLSA.

VI. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Randy Nemecek respectfully prays that Defendant be summoned to appear and to answer herein and for declaratory relief and damages as follows:

A. That Defendant be required to account to Plaintiff and the Court for all of the hours worked by Plaintiff and all monies paid to him;

B. A declaratory judgment that Defendant's practices alleged herein violate the FLSA and its relating regulations;

C. Judgment for damages for all unpaid overtime compensation under the FLSA and its relating regulations;

D. Judgment for liquidated damages pursuant to the FLSA and its relating regulations;

E. An order directing Defendant to pay Plaintiff prejudgment interest, a reasonable attorney's fee and all costs connected with this action; and

F. Such other and further relief as this Court may deem necessary, just and proper.

Respectfully submitted,

PLAINTIFF RANDY NEMECEK

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